

USDA Forest Service

Project-level Objections Process

36 CFR Part 218, Project-Level Pre-decisional Administrative Review Process

September, 2013

What is the objection process and what happened to the appeals process?

Section 428 of the Consolidated Appropriations Act, 2012 directed the Forest Service to establish a pre-decisional objection process for projects and activities documented with a Decision Notice or Record of Decision, instead of the post-decisional appeal process used since 1993. On March 27, 2013, a final rule revising 36 CFR Part 218 was published in the Federal Register and became effective upon that publication date.

The final rule expands the use of the current pre-decisional objection process promulgated in 2004 for hazardous fuel reduction projects authorized under the Healthy Forests Restoration Act (HFRA) of 2003 to include other projects and activities implementing land and resource management plans.

To meet the statutory requirements of HFRA, the notice and comment requirements of the Appeal Reform Act, and the direction of Section 428, the final rule establishes 3 subparts as follows:

Subpart A, General Provisions applicable to all proposed projects subject to Part 218;

Subpart B, Provisions specific to project-Level proposals not authorized under the Healthy Forests Restoration Act; and

Subpart C, Provisions specific to proposed projects authorized under the Healthy Forests Restoration Act.

One thing to keep in mind is that Section 428 is specific to proposed projects documented with a Record of Decision or a Decision Notice. That means, at this time, projects that are documented with a Decision Memo and categorically excluded from documentation in an environmental impact statement and environmental assessment will remain subject to the notice, comment, and post-decisional appeal procedures of 36 CFR 215.

Will this be a better process?

The Forest Service believes that considering public concerns before a final decision is made aligns with our collaborative approach to forest management and increases the likelihood of resolving those concerns resulting in better, more informed decisions. Engaging diverse perspectives and potential contributions of the American people across the country early and throughout the planning process is

essential to 21st Century forest conservation management. Collaboration is bringing divergent viewpoints together to foster conservation designed by and accomplished in partnership with the American people.

Agency policy encourages collaboration around project planning between the responsible official and interested publics. What sets the project-level objection process apart from the collaborative efforts that precede it during project planning, is the involvement of the reviewing officer in reviewing, helping to resolve, and otherwise responding to objection issues.

Who can object?

In order to object to a proposed project, you must have previously submitted timely, specific written comments during the public comment periods, unless your objection concerns an issue that arose after the opportunities for formal comment was over.

For purposes of eligibility to file an objection, an entity includes non-governmental organizations, businesses, partnerships, state and local governments, Alaska Native Corporations, and Indian Tribes. The use of the term “Objector” applies to all persons or entities who meet eligibility requirements associated with the filed objection.

As to what is considered a “specific written comment,” your comments, including transcribed oral statements, must be within the scope of the project and have a direct relationship to the proposed action. Your comments on the project must also include supporting reasons for the responsible official to consider.

Attention should be given to objections that list multiple names. When this situation arises you may find yourself the “lead objector.” It is important to know, however, that all individuals and/or entities must be able to prove eligibility. As a lead objector you would be representing the other objectors for the purposes of communication, written or otherwise, regarding the objection.

Who am I filing an Objection with?

There are two individuals who are very important to the objection process--the “responsible official” and the “reviewing officer.” The responsible official is the Forest Service employee who has the authority to make and implement a decision on a proposed action. The reviewing officer is either the Department of Agriculture or Forest Service official having the delegated authority and responsibility to review an objection.

The new objection process fosters active engagement of responsible officials with the public by reserving the reviewing officer responsibilities to a Forest Service line officer at the next higher administrative level above the responsible official, while clarifying that Deputy Regional Foresters and Deputy Forest Supervisors could serve as reviewing officers as well. That means that if the project you are interested in is on your local Ranger District and the District Ranger is the responsible official, the Forest Supervisor or Deputy Forest Supervisor would be the reviewing officer. If the Forest Supervisor is the responsible official, the Regional Forester or Deputy Regional Forester would be the reviewing officer.

When and how do I file an Objection?

The objection period begins with the publication of a legal notice in the Newspaper of Record and the issuance of the Environmental Assessment or Final Environmental Impact Statement (FEIS) and the draft Decision Notice and finding of no significant impact or draft Record of Decision (draft ROD). Notice will also be posted on the applicable Forest Service's office web page or, if the Chief of the Forest Service is the responsible official, in the Federal Register. It will be your responsibility as the objector to ensure your objection is received on time.

A letter or email stating that these documents are available will be sent out to those individuals and organizations who have submitted specific written comments on the proposed project. The documents will be available hard copy, on DVD, or on our web site.

If you wish to object to a proposed project documented in an FEIS or EA and draft ROD or draft Decision Notice you must do so in writing during the objection filing period, which is 45 days for non-HFRA projects and 30 days for HFRA projects following the publication date of the legal notice in the Newspaper of Record. Two things to bear in mind, there are no time extensions for the objection filing period and your objection must be sent to the reviewing officer. The address and contact information, and different ways you can send in your objection are found in the legal notice and in the cover letter or email sent to the public. If the objection is sent via email, the objector will receive an email confirming receipt of the objection. If you don't receive an email verifying your submittal, you should alert the contact designated in the notice.

- The objection must contain the following information:
 - The objector's name, address, and telephone number, if available;
 - Signature or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the objection);
 - Identification of the lead objector, when multiple names are listed on an objection. Verification of the identity of the lead objector if requested;
 - The name of the project being objected to, and the name and title of the responsible official and the name of the National Forest(s) and/or ranger district on which the project is located.
 - A statement of the issues and/or the parts of project to which the objection applies;
 - A concise statement explaining the objection and suggesting how the proposed plan decision may be improved. (Note: This information is very important because it will help to set the tone and agenda for the meeting discussions.) If applicable, the objector should identify how the objector believes that the plan revision is inconsistent with law, regulation, or policy; and
 - A statement that demonstrates the link between prior specific written comment attributed to the objector and the content of the objection, unless the objection concerns an issue that arose after the opportunities for formal comment. (Note: The objection procedure regulations require this linkage for issues raised in your objection.)

It is important to understand, at this stage, that the incorporation of documents by reference is not allowed except for the following:

- All or any part of a Federal law or regulation
- Forest Service directives and land management plans
- Documents referenced by the Forest Service in the proposed project EA or EIS subject to objection
- Comments that you have already submitted on the project

Is there a chance my objection will be rejected?

There are several ways your objection might be set aside and not considered. The first is that you missed the deadline! Be sure to submit your objection before the end of the objection period. Remember, you only have 45 days for non-HFRA projects and 30 days for HFRA projects. The second is that the project you are interested in is not subject to the objection process, such as any projects being considered under a categorical exclusion. Any notices to the public will explain which process the proposed project falls under, so hopefully you won't run into this problem.

Another potential stumbling block would be if you didn't submit timely and specific written comments regarding the project during scoping or another designated opportunity for public comment. There is an exception to this regarding issues that arose after the opportunities for comment were over. If this happened, you must be able to link your issues with the new information or you risk having your objection set aside because you had not commented during the project and cannot prove the connection between your objection and the new information.

To avoid these problems, be sure your other issues in your objection are based on previously submitted specific written comment along with a statement demonstrating the connection between your comments and your objection. And finally, please make sure you provide a legible objection, that your identity is provided, and you supply enough information for the reviewing officer to understand the issues. If not, you may find your objection has been set aside. If your objection is set aside, both you and the responsible official will be notified and given an explanation on why this has happened.

What happens to my objection, once I send it in?

Once the objection is received by the reviewing officer it will be reviewed to determine if it contains the necessary information and if the objector commented on the proposed project or activity. The reviewing officer will confirm receipt of the objection, and accept, partially accept, or set aside the objection in writing.

For non-HFRA project, after the 45-day objection filing period ends, a 45-day objection review period will begin. The review period may be extended up to 30 days at the discretion of the reviewing officer. If there is a time extension the reviewing officer will notify all parties. For HFRA projects, after the 30-day objection filing period ends, a 30-day objection review period will begin with no extension of the review period.

Prior to a written response by the reviewing officer, the reviewing officer or the objector may request to meet to discuss issues raised in your objection and any potential resolution. The reviewing officer has the discretion to determine whether adequate time remains in the review period to make a meeting

with you practical, the appropriate date, duration, agenda, and location for any meetings, and how the meeting(s) will be conducted to facilitate the beneficial dialogue, such as a face to face office meeting, project site visit, teleconference, video conference, etc.

Along with the reviewing officer, it is expected that the responsible official will attend any resolution meetings and while these meetings are not required to be legally noticed, they are open to the public. The reviewing officer will, however, determine whether people other than objectors may actively participate. If there is more than one objection, the reviewing officer may decide to hold a joint meeting with all objectors to help everyone understand each other's issues. All parties will be notified of the meeting time(s), location(s), and any necessary conferencing contact information.

At the end of the objection reviewing period the reviewing officer may consolidate objections and issue one response or may decide to issue a written response to each objection. The written response(s) will set forth the reasons for the response, but is not required to be a point-by-point response. It may contain instructions to the responsible official. The written response will be the final decision by the U.S. Department of Agriculture on the objections.

Once the reviewing officer has issued the response to the objections, and the responsible official has followed any instructions contained in the written response, the responsible official may sign the final ROD or Decision Notice and implement the project.